

Application No.: 10/663,300

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Docket No.: 509982005600

REMARKS

In the Office Action, claims 1-9, 11-18, and 20-35 were rejected. Claims 10 and 19 were objected to. Claims 1, 3, 20, and 28 have been amended. Claims 2, 21, and 29 have been canceled. Claims 1, 3-20, 22-28, and 30-35 remain pending. Applicants request reconsideration of the pending claims in view of the following remarks.

I. Claim Objections

Claims 10 and 19 were objected to under 37 CFR 1.75(c). The Examiner, however, did not provide any reason for objecting to these claims.

Claim 10, which depends from claim 9, recites that the global minimum error is used to evaluate the performance of one or more global search algorithm. Claim 9 recites that a global minimum error is determined. Thus, Applicants assert that claim 10 is a proper dependent claim in that it further recites that the global minimum error determined in claim 9 is used to evaluate the performance of one or more global search algorithm.

Claim 19, which depends from claim 18, recites that the measurement die pattern is used in advanced process control and process characterization. Claim 18 recites that a measurement die pattern is determined. Thus, Applicants assert that claim 19 is a proper dependent claim in that it further recites that the measurement die pattern determined in claim 18 is used in advanced process control and process characterization.

Therefore, Applicants request that the objection to claims 10 and 19 be withdrawn.

II. Claim Rejections – 35 USC 101

Claims 20-27 were rejected under 35 USC 101. The Examiner asserts, "the claimed invention in the said claims fail to include transformation from one physical state to another." The Examiner asserts, "computer code does not belong to any of the four statutory catalogs of 35 USC 101."

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MPEP Section 2106.01 provides that "when functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." Claim 20 recites "[a] computer-readable storage medium containing computer executable code...." (Emphasis added.) Thus, in claim 20, the computer executable code is recorded on a computer-readable medium and, according to Section 2106.01, such subject matter is statutory.

Therefore, Applicants assert that according to Section 2106.01, claim 20 is allowable and the rejection under 35 U.S.C. § 101 is inappropriate. Claims 22-27, which depend from claim 20, are allowable for at least the same reason as set forth above for claim 20.

III. Claim Rejections – 35 USC 102

Claims 1, 4-9, 11-14, 16-28, 28, 30-35 were rejected under 35 USC 102(e) as being unpatentable over US Patent Publication No. 2004/0017575 (The Balasubramanian reference).

Independent claims 1, 20, and 28 have been amended to include the limitations of dependent claims 2, 21, and 29.

The Examiner rejected dependent claims 2 and 29 as being obvious under 35 USC 102 over the Balasubramanian reference in combination with various references. While claim 21 was not rejected under 35 USC 102 over the Balasubramanian reference, it has the same limitations as dependent claim 2.

The present application (Application Serial No. 10/663,300) and the Balasubramanian reference (Application Serial No. 10/397,631) were, at the time the invention of the present application was made, owned by Timbre Technologies, Inc.

Thus, in accordance with 35 USC 103(c)(1) and MPEP 706.02(1)(2), Applicants assert that the 103 rejection based on the Balasubramanian reference is improper.

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IV. Claim Rejections – 35 USC 103

Claims 2, 3, 15, and 29 were rejected as being obvious under 35 USC 103. Claims 2 and 29 have been canceled. As noted above, the present application and the Balasubramanian reference were, at the time the invention of the present application was made, owned by Timbre Technologies, Inc. Thus, Applicants assert that the 103 rejection based on the Balasubramanian reference is improper.

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V. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 509982005600. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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